

Special Meeting of the Richmond Rent Board

November 14, 2018 | City Council Chambers

Item I-1: Proposed revisions to regulation 602, regarding “banking” of Annual General Adjustment rent increases

November 14, 2018 | Special Meeting of the Richmond Rent Board

Item I-1: Statement of the Issue

- On December 20, 2017, the Richmond Rent Board adopted Regulation 602, which allows Landlords of Controlled Rental Units to “bank” Annual General Adjustment rent increases, with limitations.
- Staff members are proposing revisions to Regulation 602 to:
 - (1) Clarify the banking provisions of the Regulation, where Landlords may apply up to 5% of deferred rent increases in a twelve-month period; and
 - (2) Establish the utilization of a compound interest formula, rather than a simple interest formula, in the calculation of the Maximum Allowable Rent.

Item I-1: Banking Regulation Background

- Each September, the Fair Rent, Just Cause for Eviction and Homeowner Protection Ordinance (Rent Ordinance) allows Landlords to increase the Maximum Allowable Rent by the Annual General Adjustment.
- Pursuant to Rent Board Regulation 602, if a Landlord elects not to take an AGA increase, rather than losing that AGA increase, they may defer that increase (or multiple deferred AGA increases) to be taken in future years, with a limit of taking no more than 5% of deferred increases plus the current year's applicable increase within a 12 month period.

Item I-1: Banking Regulation Background

On December 20, 2017, the Richmond Rent Board adopted Regulation 602, which states, in pertinent part:

“B. To the extent a Landlord has not increased Rent up to the Maximum Lawful Rent level, the Landlord shall have the ability to apply deferred Annual General Adjustment rent increases; however, the net rent increase in any one twelve-month period shall not exceed the current year Annual General Adjustment Rent Increase plus five percent (5.0%) of the Rent charged at any time during the preceding 12-month period.”

Item I-1: Proposed Amendments to Clarify the Banking Provisions of Regulation 602

- In their application of this provision, staff members have recognized that the current language may not adequately articulate the Board's intent to limit the application of deferred rent increases to five percent annually.
- To rectify this issue, staff members propose the following language:

“B. To the extent a Landlord has not increased Rent up to the Maximum Lawful Rent level, the Landlord shall have the ability to apply deferred Annual General Adjustment rent increases; however, if the proposed rent increase for the Tenant household exceeds the current year Annual General Adjustment plus 5 percent (5.0%) of the rental amount charged to the Tenant household at any time during the 12 months prior to the effective date of the proposed increase, either in and of itself or when combined with any other rent increases for the 12 months prior to the effective date of the increase, the proposed rent increase shall be void.”

Item I-1: Compounding vs. Simple Interest Issue

- The current Regulation employs a simple interest formula (e.g. 3.0% plus 3.4% equals 6.4%) rather than a compounding interest formula (e.g. 3.0% plus 3.4% equals 6.56%).
- To accurately calculate the Maximum Allowable Rent, which equals the Base or initial Rent paid plus each years AGA increase, the previous years Maximum Allowable Rent level must be multiplied by the current AGA percentage.
 - This process uses compounding interest.
- Regulation 602 should therefore reflect this compounding (versus simple) interest formula.

Item I-1: Compounding vs. Simple Interest Issue

The cumulative impact of utilizing simple versus compound interest formulas is shown in the table below. While the difference between the Maximum Allowable Rent using these two formulas may appear nominal in the first few years, the net effect of utilizing simple versus compound interest formulas will become more pronounced over time.

Year	AGA Rent Increase	Cumulative Total AGAs – <u>Simple Interest Formula</u>	New MAR - <u>Simple Interest Formula</u> (Assumes Base Rent of \$1,000)	Cumulative Total AGAs – <u>Compound Interest Formula</u>	New MAR – <u>Compound Interest Formula</u> (Assumes Base Rent of \$1,000)
2016	3.0%	3.0%	\$1,030	3.0%	\$1,030
2017	3.4%	6.4%	\$1,064	6.56%	\$1,065
2018	3.6%	10.0%	\$1,100	10.3%	\$1,103

Item I-1: Compounding vs Simple Interest

- Under a simple interest “banking” scheme, Landlords who elect to defer Annual General Adjustment increases will forego a portion of the rent increase.
- This may be inconsistent with the Rent Board’s intent to allow Landlords to recover previously deferred Annual General Adjustment rent increases to the fullest extent.

Item I-1: Summary of Why Compounding Interest Should be Used

1. The Maximum Allowable Rent or “rent ceiling” uses compounding interest. Using simple interest to add together multiple deferred AGA increases would result in rent ceilings that are lower for landlords (that defer AGA increase) than rent ceilings for a landlord who takes each year’s AGA increase.
2. Using simple interest would make it more difficult to accurately calculate the Maximum Allowable Rent in a consistent manner and would work against the goal of rent registration. The goal of rent registration and the outreach associated with it, is to get Landlords and Tenants on the same page regarding what the Maximum Allowable Rent is.
3. Using simple interest could result in unnecessary disputes and petitions to bring rents up to the rent ceiling.

Item I-1: Recommended Action

ADOPT amendments to Regulation 602 to: (1) clarify the banking provisions of the Regulation, where Landlords may apply up to 5% of deferred rent increases in a twelve month period, and (2) establish the utilization of a compound interest formula, rather than a simple interest formula, in the calculation of the Maximum Allowable Rent – Rent Program (Nicolas Traylor 510-620-6564).

Item I-2: PROPOSED REVISION TO REGULATION 842, CONCERNING THE APPEALS PROCESS

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Item I-2: Statement of the Issue

- On January 24, 2018, the Rent Board adopted Regulation 842, which describes the process whereby a party to a Rent Adjustment Petition may appeal the Hearing Examiner's decision. Regulation 842(F) provides that if the Board has not acted on the appeal at two consecutive Board meetings, the appeal is deemed denied.
- At the request of the Rent Board Chair, staff explored possible amendments to this provision to clarify the process whereby an appeal could automatically be denied by the Board due to non-action. Staff members are recommending deletion of this provision.

Item I-2: Background and Purpose

- In accordance with Regulation 841, any party may appeal a hearing examiner's decision to the Board. On appeal, the Board may affirm, reverse, remand or modify the decision of the hearing examiner. Appeals are filed on a form provided by the Board no later than thirty (30) calendar days after receipt of the notice of the hearing examiner's decision. Once an appeal has been received, staff members will review the appeal, and, if complete, agendaize the appeal for Board action at the next Regular Meeting.
- At least fourteen (14) calendar days prior to the date set for Board action on the appeal, staff members will prepare a Rent Board Agenda Report, recommending that the decision of the hearing examiner be affirmed, modified, reversed or remanded to the hearing examiner for further hearing.

Item I-2: Proposed Change to Regulation 842

- The last part of Section F of Regulation 842 states that if the Board has not acted on the appeal at two consecutive Board meetings, the appeal is deemed denied. Staff members are recommending deletion of this provision, and instead, developing an internal policy where staff will make every possible effort to ensure appeals are agendized within a reasonable amount of time from the date of receipt of the appeal. This policy shall allow adequate time for the Staff Attorney to review the appeal and issue a recommendation to the Board.

Item I-2: Purpose of Proposed Change to Regulation 842

The proposed amendment will achieve the following:

1. It will allow the Rent Program's Staff Attorney adequate time to issue a legal analysis on the appeal to the Board. In light of the fact that there is only one Staff Attorney and that some appeals may be more complicated than others, it may be prudent to allow sufficient time for a thorough analysis.
2. It will ensure the Rent Board has sufficient opportunity to weighed in on the matter. If appeals are denied due to staff shortages or lack of Board action (after 2 successive regularly scheduled Board meeting), appellants wishing to have their case heard, would be required to appeal their case to Superior Court via a writ, which would potentially lead to decisions without the Board having weighed in.

Item I-2: Recommended Action

- ADOPT an amendment to Regulation 842(F), removing the provision that if the Board has not acted on an appeal at two consecutive Board meetings, the appeal is deemed denied – Rent Program (Nicolas Traylor 620-6564).



**CITY OF RICHMOND RENT
PROGRAM**

Richmond Fair Rent, Just Cause for Eviction, and
Homeowner Protection Ordinance (RMC 11.100)

**REQUEST FOR PROPOSALS FOR
LEGAL SERVICES**

Item J-1: Reissuance of a Request for Proposals for Community Legal Services

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Item J-1: Statement of the Issue

- Since February 1, 2018, the Rent Board has contracted with Centro Legal de la Raza, whose offices are located in Fruitvale, to provide legal consultations to qualifying Richmond residents.
- Staff members are proposing the reissuance of a Request for Proposals for Community Legal Services to solicit proposals from non-profit service providers who may be better equipped to serve Richmond residents based on:
 - Proximity to Richmond
 - Staff capacity
 - Ability to assist Tenants residing in governmentally-subsidized Rental Units
- Staff members are seeking authorization from the Rent Board to enter into community legal services contracts for qualifying Richmond residents in a total contract amount not to exceed \$37,500 for the second half of FY 2018-19.

Item J-1: Definition of “Qualifying Richmond Residents”

- The draft Request for Proposals seeks applicants to provide legal services to Low Income Richmond residents.
- For the purpose of the contract, “Low Income” is defined as households meeting the definition of Low Income in Contra Costa County as determined by HUD guidelines:

Family Size	Low Income Threshold (80% AMI)
1	\$62,750
2	\$71,700
3	\$80,650
4	\$89,600
5	\$96,800
6	\$103,950
7	\$111,150
8	\$118,300

Item J-1: Background

- On June 21, 2017, the Rent Board directed staff to negotiate and execute legal services contracts.
- In accordance with the City's procurement process, on August 11, 2017, the Rent Program issued a Request for Qualification and Proposals for Legal Services.
- The Rent Program received four proposals from the following prospective service providers:
 - The Eviction Defense Center
 - Centro Legal de la Raza
 - Judondi Bolden
 - Charles Ramsey

Item J-1: Background (Continued)

- Proposals were evaluated by a review committee and ranked based on the following criteria:
 - Experience with local, state, and federal laws, regulations, and litigation in local courts;
 - Ability to respond to Rent Program needs in an effective and timely manner;
 - Familiarity with the City of Richmond and ability to serve the Richmond community;
 - The extent to which additional resources will be provided if a contract with the Rent Program is awarded, specifically in terms of the number and staff employed;
 - Demonstrated ability to translate documents and communicate in multiple languages;
 - Familiarity with subsidized rental housing policies and programs; and
 - The fee proposal and overall cost-effectiveness of the proposal.
- Based on the proposals and feedback from the review committee, staff members executed contracts with the Eviction Defense Center and Centro Legal de la Raza.

Item J-1: Eviction Defense Center Service Review

- On February 1, 2018, the Rent Board executed a contract with the Eviction Defense Center to provide pre-litigation counseling and review of documents with appropriate legal response and/or full representation in court at their unlawful detainer hearing for a minimum of 15 Richmond tenants per month.
- Since February 2018, the Eviction Defense Center has consistently exceeded their anticipated service levels, averaging over 40 clients served per month between February and September 2018.
- On June 20, 2018, the Rent Board renewed its contract with the Eviction Defense Center, allocating \$75,000 of funds budgeted for FY 2018-19 and extending the term to June 30, 2019.

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EVICTIION DEFENSE CENTER



RICHMOND RESIDENTS

The Eviction Defense Center provides free and low-cost legal services to Richmond residents on a broad range of housing matters including substandard housing conditions, subsidized housing, rent increases, fair housing matters, and eviction defense.

Item J-1: Centro Legal Service Review



**CENTRO LEGAL
DE LA RAZA**

- On February 1, 2018, the Rent Board executed a contract with Centro Legal de la Raza to provide 125 consultations to qualifying Tenants related to Landlord/Tenant issues at its office in Oakland and legal representation to qualifying Tenants requiring injunctive, declarative, or other legal remedies at a rate of 8 cases per year.
- Centro Legal offers two clinics open to Richmond tenants at its office in Oakland:
 - Tuesdays, beginning at 2:30 PM
 - Thursdays, beginning at 9:00 AM
- Since February 2018, Centro Legal de la Raza has assisted an average of 11 clients per month.
- While reports indicate at least 10 cases have been selected for legal representation, the extent of affirmative action and court appearances is unclear from monthly report data.
- On June 20, 2018, the Rent Board renewed its contract with Centro Legal, allocating \$75,000 of funds budgeted for FY 2018-19, extending the term to June 30, 2019, and modifying the service plan to specify that Centro Legal de la Raza agrees to provide 125 legal consultations to qualifying Tenants per year.

Item J-1: Proposed Reissuance of an RFP for legal services

- To ensure adequate service levels, staff members are proposing the reissuance of a Request for Proposals for Community Legal Services to solicit proposals from non-profit service providers who may be better equipped to provide those legal services currently provided by Centro Legal.
- Legal services sought by the RFP may include, but are not limited to:
 - Providing no less than 0.5 FTE of an attorney dedicated to Richmond cases;
 - Offering housing clinics in the City of Richmond available to all low-income community members, regardless of citizenship status;
 - Assisting community members with the completion of Rent Adjustment Petitions;
 - Advocating for Richmond residents through the issuance of written correspondence, Rent Adjustment Petitions, and affirmative action cases; and
 - Coordinating with peer legal service providers and the Rent Program to provide comprehensive support to Richmond community members.

Item J-1: Proposed Reissuance of an RFP for legal services (Continued)

- If an alternative legal service provider is selected through the RFP process, it is anticipated that Centro Legal de la Raza would withdraw from their existing contract in January 2019 through a mutual agreement with Rent Program staff.
- The new legal service provider would resume services for the remainder of the Fiscal Year in an amount not to exceed the remaining budgeted amount of \$37,500.
- If services are provided to the satisfaction of the Executive Director, the contract could be renewed for the 2019-20 Fiscal Year.



**CITY OF RICHMOND RENT
PROGRAM**

Richmond Fair Rent, Just Cause for Eviction, and
Homeowner Protection Ordinance (RMC 11.100)

**REQUEST FOR PROPOSALS FOR
LEGAL SERVICES**

Item J-1: Recommended Action

DIRECT staff to negotiate and execute community legal services contracts for qualifying Richmond residents in a total contract amount not to exceed \$37,500 for the second half of Fiscal Year 2018-19 (January 2019 – June 2019) – Rent Program (Nicolas Traylor 620-6564).

Item J-2: Affordable Housing Ad Hoc Committee Report and Recommendation

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Item J-2: Statement of the Issue

- **April 18, 2018 Rent Board meeting:** several residents from Heritage Park apartments gave comments on rent increases and safety on the property. Chair Gray directed Legal Counsel to address these concerns and provide information about the application of the Rent Ordinance to the property.
- **June 20, 2018 Rent Board meeting:** the Rent Board appointed two of its members to an Affordable Housing Ad Hoc Committee to develop a voluntary agreement with affordable housing providers. The purpose of this agreement was to limit sudden rent increases in these units and address other concerns raised by Tenants regarding habitability, health and safety issues.
- The Ad Hoc Committee recommends that the Rent Board review and discuss the proposed limit on maximum rent increases for LIHTC units, as well as a process for dealing with habitability issues.

Item J-2: Background

Low Income Housing Tax Credits (LIHTC)

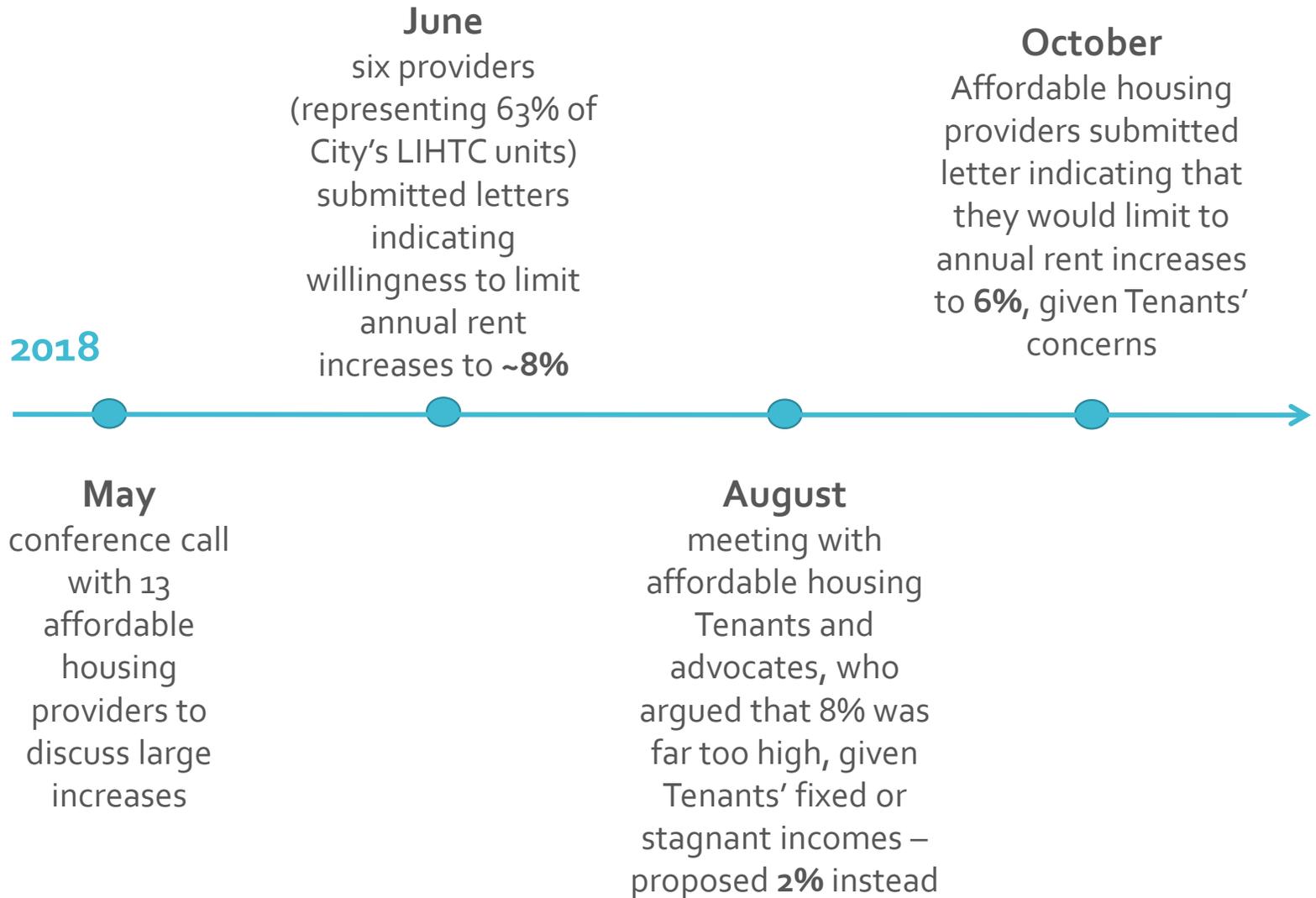
- 2,702 LIHTC units estimated in Richmond (approximately half of these also receive Section 8 subsidy)
- Maximum rents in LIHTC units set annually by California Tax Credit Allocation Committee (TCAC) based on number of bedrooms and Area Median Income for Alameda & Contra Costa counties
- Exempt from the rent control provisions of the Rent Ordinance but not the just cause for eviction provisions (Regulation 202 & Regulation 204, previously 17-01, adopted November 15, 2017)

Item J-2: Ad Hoc Committee Purpose

The Affordable Housing Ad Hoc Committee aimed to resolve two key questions:

1. Are TCAC's rent restrictions sufficient to address "rent shock," particularly in potentially-anomalous years like 2018, when Area Median Income and TCAC maximum rents increased more than 10 percent?
2. Are LIHTC Tenants in Richmond able to successfully assert their rights to safe and habitable living conditions?

Item J-2: Conversations with Stakeholders



Item J-2: Findings on “Rent Shock”

- Rent Ordinance aims to promote community stability and housing affordability by limiting annual rent increases and prevent “rent shock”
- Unlike the Rent Board, TCAC does not regulate the amount of annual increases – instead, it sets a rent ceiling each year based on AMI
- Historically, average increases to TCAC maximum rents were similar or less than CPI (~2.6% annually over the past 12 years)
- TCAC maximum rents for the East Bay increased 24% between 2016 and 2018 due to rising AMI
- Many working families, seniors and people receiving disability assistance have not seen similar increases in incomes

Item J-2: Findings on Safety and Habitability

- Since LIHTC units are exempt from rent control, residents cannot use the rent adjustment petition process
- LIHTC residents *can* utilize Rent Program counseling and mediation services
- As part of their regulatory agreements, LIHTC providers are required to provide safe, habitable units and on-site management
- Rent Program staff have received numerous complaints from residents regarding living conditions that affect health and safety
- LIHTC providers and Tenants expressed interest in the Rent Program's mediation services

Item J-2: Proposal by the Ad Hoc Committee

After hearing concerns of providers and Tenants, the Ad Hoc Committee proposes the following strategies to mitigate destabilizing rent increases and address living conditions:

- A limit on annual increases for LIHTC units that do not have a Section 8 subsidy as well
- A robust mediation process for LIHTC Tenants and providers;
- A designated liaison (Rent Program staff member) who would address unresolved habitability complaints; and
- An annual report from the Rent Program to the Rent Board on the state of affordable housing in Richmond, including but not limited to, rent increases, habitability issues, and eviction patterns. This would help the Rent Board make decisions about exemptions under Regulation 202 and assess the services offered by the Rent Program to LIHTC Tenants and providers.

Item J-2: Recommended Action

- (1) RECEIVE an update from the Ad Hoc Committee on their efforts to reach an agreement with affordable housing providers to address rent increases and living conditions in Low-Income Housing Tax Credit developments; and
- (2) DISCUSS proposed strategies to mitigate destabilizing rent increases and address living conditions in Low-Income Housing Tax Credit developments